

IN THE CIRCUIT COURT OF BOONE COUNTY, MISSOURI

THE CITY OF COLUMBIA, MISSOURI,)
a municipal corporation,)

Plaintiff,)

v.)

IT'S OUR WILD NATURE)

Defendant.)

No. 18BA-CV02763

ORDER

The Court, having heard the condemnation petition in this case and having reviewed the pleadings, finds that it has jurisdiction and that It's Our Wild Nature ("IOWN"), through its predecessor-in-interest, has been given proper notice of the filing by the City of Columbia ("the City") of the Petition and Amended Petition.

The Court further finds as follows:

1. At the outset, the Court notes that its role in this case is not to weigh the relative merits of a trail versus a natural area or determine which one better advances the public good. The question before the Court is not whether trails are superior to natural areas or natural areas are superior to trails.
2. Rather, the Court's inquiry is limited to determining whether the City has met all of the requirements necessary to exercise the power of condemnation and acted in good faith. In this case, the Court finds that the City has satisfied the requirements and acted in good faith and may exercise its power of condemnation.

3. Defendant IOWN, a Missouri nonprofit corporation, is the record owner in fee simple absolute of a tract of land located in Columbia, Boone County, Missouri, described in paragraph 2 of the Amended Petition in Condemnation.

4. The City seeks to take and acquire for the purposes described in the Amended Petition a permanent scenic conservation bikeway/walkway easement through, over, under, upon and across the tract of land owned by IOWN. The easements which the City seeks to condemn and acquire across the land owned by IOWN are described in Exhibit A to the Amended Petition. A copy of Exhibit A is attached to and incorporated in this Order.

5. The Court finds that the use for which the City seeks the permanent easements is for the public benefit, use and convenience, and the City is entitled to acquire these easements for the purposes set forth in the Amended Petition. The City is entitled to have ascertained and assessed damages, if any, which IOWN as owner of the tract of land may sustain because of the taking and acquisition of the easements by the City.

6. The City has given IOWN's predecessor proper information, notices and offer in accordance with the provisions of Section 523.250 and Section 523.253 RSMo, and IOWN as successor is subject to those notices.

7. The City, through its agents, attempted, before the filing of the Petition, to purchase the easements from IOWN's predecessor, but the City and IOWN's predecessor were unable to agree upon the proper compensation to be paid, and IOWN has subsequently refused to grant the City the easements.

8. The Court does not find that the City failed to negotiate in good faith or that the City failed to establish "necessity."

9. A governmental entity's determination of "necessity" is not subject to judicial review absent fraud, bad faith or an unwarranted abuse of discretion. *Mapco, Inc. v. Williams*, 581 S.W.2d 402, 405 (Mo. App. 1979). Here, evidence has been adduced to establish the necessity of the easement rights sought. Whether another path or route would have been preferable for a walkway does not demonstrate bad faith or an unwarranted abuse of discretion by the City. In addition, the Court finds that the absence in the easements of the sewer line access described in the City's offer letter does not rise to the level of bad faith – an offer letter, by definition, contemplates the possibility of subsequent negotiation and modification.

10. The Court further finds that the terms in the easements are not ambiguous or incapable of definition, and finds that the scope of the easements is authorized by the City's ordinance. The City's authorizing ordinance authorizes the City to "acquire property" and "obtain, execute and record all deeds and other instruments necessary" for acquisition, and includes no words of limitation. Given this relatively broad legislative authority, it follows that easement rights such as "conservation purposes," "appurtenances," "storm water and erosion control" and "preservation as open green space and/or woodland" are not an expansion of the authority granted by the ordinance – they are the means of implementing the ordinance consistent with the authority and purpose of the ordinance. The scope of the taking is not greater than the legislative determination. While the Court is sensitive to the potential for government to abuse the power of eminent domain, the Court also notes that it is not entitled to substitute its judgment for the City's legislative determination that a bikeway/walkway is a necessary or legitimate public purpose and that, in this case, there are certain easement rights that are necessary to accomplish that purpose.

11. Finally, to the extent relevant, the Court finds that 42 U.S.C. Section 4651 is an expression of policy that does not create an additional prerequisite to condemnation. *See also City of Columbia v. Baurichter*, 713 S.W.2d 263, 267 (Mo. 1986) (satisfaction of state statute satisfied federal requirements).

For the foregoing reasons, the Court orders that the land and premises owned by IOWN described in paragraph 2 of the City's Petition and Amended Petition is condemned for the easements as set forth in Exhibit A to the Amended Petition, upon and across the real estate, and the City is hereby granted the easements as described in Exhibit A upon and across the real estate owned by IOWN for the purposes and subject to the conditions set forth in the City's Petition and Amended Petition.

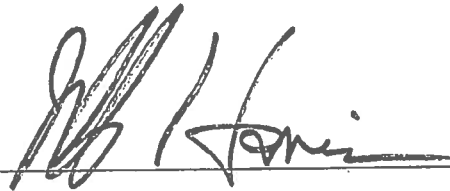
The Court does not appoint Commissioners at this time to ascertain, assess and award damages, if any, which IOWN as owner of the real estate shall sustain by reason of the condemnation ordered. The Court orders the parties to confer regarding the Commissioners to be appointed and to jointly submit to the Court the names of five individuals whom the parties agree may serve as Commissioners. The parties shall submit the names of the five potential Commissioners and a proposed order of appointment by Casenet filing by January 31, 2019. The Court will appoint Commissioners from the list of the five individuals.

It is further ordered that the City shall have the right to take possession of the easements for the uses and purposes immediately upon the filing of the Commissioners' report and the payment into Court of any damages awarded by the Commissioners in their report.

It is further ordered that the Clerk of the Circuit Court of Boone County, Missouri, is directed to file one copy of the report in her office and record the same in

the proper book and record of the Court and shall deliver the other copy of the report duly certified to the Recorder of Deeds of Boone County, Missouri, as required by law and that the Clerk shall cause a copy of this Order to be delivered to each of the Commissioners after they have been appointed.

1-10-19



Judge Jeff Harris
13th Circuit
Division 2

COURT SEAL OF



BOONE COUNTY

SCENIC CONSERVATION BIKEWAY/WALKWAY EASEMENT

THIS INDENTURE, made on the _____ day of _____, 20____, by and between _____, of the State of Missouri, Grantor, and the City of Columbia, Missouri, a municipal corporation in the County of Boone and the State of Missouri, Grantee; Grantee's mailing address is Post Office Box 6015, Columbia, MO 65205;

WITNESSETH:

That Grantor, for good and valuable consideration, which includes its desire to preserve for posterity the natural beauty and character of the following described property, does hereby grant unto the City of Columbia, Missouri, an exclusive perpetual easement in, over, under, across and through the following described real property for all the following purposes: (1) all conservation purposes (including but not limited to storm water and erosion control), (2) preservation as open green space and/or woodland, (3) for the construction, installation, reconstruction, replacement, removal, repair, maintenance, and operation of a bikeway/walkway-path/trail; not to exceed ten (10) feet in width, and appurtenances thereto:

Project: Hinkson Creek Extension
Ordinance #: 023470

LEGAL DESCRIPTION:

PROPERTY ID: 17-410-00-00-009.00

TWO (2) TRACTS OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 48 NORTH, RANGE 12 WEST, COLUMBIA, BOONE COUNTY, MISSOURI, BEING ACROSS PART OF PARCEL NO. 25 OF THE WARRANTY DEED RECORDED IN BOOK 4009, PAGE 82 AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

TRACT 1

COMMENCING AT THE SOUTHWEST CORNER OF STADIUM CONDOMINIUMS, RECORDED IN BOOK 707, PAGE 97 ON THE NORTH RIGHT-OF-WAY LINE OF STADIUM BOULEVARD; THENCE WITH SAID NORTH RIGHT-OF-WAY LINE, N70°25'30"W, 46.06 FEET; THENCE LEAVING SAID NORTH RIGHT-OF-WAY LINE, N10°44'30"W, 107.93 FEET; THENCE N25°18'15"E, 222.87 FEET; THENCE N85°35'15"E, 259.25 FEET; THENCE N57°01'10"E, 281.25 FEET; THENCE N43°49'05"E, 280.46 FEET; THENCE N50°45'50"E, 204.35 FEET; THENCE N53°35'25"E, 242.67 FEET; THENCE N15°04'20"E, 37.67 FEET; THENCE N34°01'05"W, 265.16 FEET; THENCE N8°59'45"W, 148.07 FEET; THENCE N12°13'35"W, 134.99 FEET; THENCE N29°52'25"E, 95.27 FEET TO A POINT IN THE CENTER OF HINKSON CREEK ON THE WEST LINE OF BOONE COUNTY SURVEY #7296 AND THE POINT OF BEGINNING;

THENCE FROM THE POINT OF BEGINNING, CONTINUING N29°52'25"E, 111.79 FEET; THENCE N38°04'10"W, 104.54 FEET; THENCE N25°37'20"W, 114.12 FEET; THENCE N16°18'15"W, 198.73 FEET; THENCE N10°38'05"W, 170.37 FEET; THENCE N19°05'05"W, 228.02 FEET; THENCE N14°18'50"W, 247.57 FEET TO "POINT A" OF THIS DESCRIPTION; THENCE N87°56'45"E, 75.14 FEET; THENCE S12°31'20"E, 458.79 FEET; THENCE S10°19'25"E, 170.08 FEET; THENCE S31°19'45"E, 565.54 FEET; THENCE S22°54'10"W, 225.99 FEET TO SAID WEST LINE OF BOONE COUNTY SURVEY # 7296; THENCE WITH SAID WEST LINE, N23°43'40"W, 49.15 FEET; THENCE N34°03'40"W, 196.85 FEET TO THE POINT OF BEGINNING AND CONTAINING 2.48 ACRES;

TRACT 2

COMMENCING AT "POINT A" DESCRIBED ABOVE; THENCE N23°14'15"W, 21.45 FEET TO THE POINT OF BEGINNING;

THENCE FROM THE POINT OF BEGINNING, CONTINUING N23°14'15"W 89.14 FEET; THENCE N8°04'40"W, 195.74 FEET; THENCE N87°01'00"E, 98.32 FEET; THENCE 66.73 FEET ALONG A 490.00-FOOT RADIUS NON-TANGENT CURVE TO THE LEFT, SAID CURVE HAVING A CHORD, S1°02'25"W, 66.68 FEET; THENCE S87°08'20"W, 18.00 FEET; THENCE S3°45'25"E, 15.87 FEET; THENCE N85°20'55"E, 18.00 FEET; THENCE 91.69 FEET ALONG A 490.00-FOOT RADIUS NON-TANGENT CURVE TO THE LEFT, SAID CURVE HAVING A CHORD, S10°00'45"E, 91.56 FEET; THENCE 67.41 FEET ALONG A 290.00-FOOT RADIUS CURVE TO THE RIGHT, SAID CURVE HAVING A CHORD, S8°42'50"E, 67.26 FEET; THENCE S2°03'15"E, 27.95 FEET; THENCE S44°57'05"W, 17.69 FEET; THENCE S87°56'45"W, 49.95 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.54 ACRES.

Grantor and Grantee, as further consideration for the easement granted herein, do hereby agree that the following terms, conditions, restrictions and limitations shall be effective and binding upon the parties and their respective successors and assigns.

The easement herein granted shall run with the land in perpetuity and it is the intent and purpose of both parties to this easement to restrict and forbid any activity or use which would, as a natural consequence of such, impede or make more difficult use of the easement for its intended purposes and accomplishment of scenic, erosion control, and conservation objectives.

It is the intent of this easement that no private encroachment shall be permitted and the Grantor shall not cause to be constructed or allow to be constructed in, over, under, across, through, or upon the described easement any buildings, structures, swimming pools, signs, billboards, utility lines or pipes, power transmission lines, roadway or any other improvements not provided for herein, except as otherwise previously provided for in this easement.

Grantor accepts no liability for accidents or damages resulting from such public use of the easement as may be invited by the Grantee's construction of the bikeway/walkway, or as otherwise may result from the Grantee's ownership of the easement granted herein.

The Grantee agrees to keep said easement clear of debris and trash and to repair and maintain any Grantee improvements in a good and safe condition, free of nuisance.

Subject to the conditions, restrictions, and limitations contained herein, this conservation easement is not intended to interfere with the use of the easement area by the Grantor and its successors and assigns for all purposes which are not inconsistent with or antagonistic to this grant.

The Grantor shall not cause or allow any of the following to be done on the described easement:

- a. excavation
- b. change of topography
- c. mining, drilling, removal of top soil, sand, gravel, rocks or minerals
- d. spraying of herbicides or pesticides
- e. dumping or burning
- f. hunting or trapping
- g. commercial lumbering
- h. storage or placement of any trailers, house trailers, signs, billboards, advertisements, equipment, machinery, cars, trucks, garbage, trash, unsightly materials or items of any nature whatsoever

Except for dead or diseased plant life, which condition may be determined only by the City of Columbia, no plants, shrubs, ground cover or trees shall be removed. However, the City of Columbia may remove plants, shrubs, ground cover and trees necessary for the construction, installation, maintenance, repair, etc., of the bikeway/walkway, and for conservation, scenic, and erosion purposes or for reasons of public safety, as determined by the City of Columbia.

Grantor's duties, obligations, and liabilities, relating to natural drainage courses shall not be affected by the easement granted here.

The only vehicular access granted by the easement shall be for purposes of maintenance of Grantee's facilities on the easement or for access by emergency vehicles and the case of the occurrence of an emergency within the easement, except as otherwise previously provided for in this easement.

The Grantor covenants that, subject to liens and encumbrances of record at the date of this easement, they are the owners of the above-described land and have the right and authority to make and execute this Grant of Easement. Said Grantor hereby conveys according to the terms and provisions of the trust agreement and pursuant to the powers conferred by said agreement and states that the trust agreement remains in full force and effect at this time and that the same has not been amended or revoked.

TO HAVE AND TO HOLD said real property unto said Grantee, the City of Columbia, its successors and assigns forever, for the uses and purposes hereinbefore described.

WITNESS our hands the day and year first written above.

STATE OF Missouri)
COUNTY OF Boone)ss.

On this _____ day of _____ in the year 20 _____, before me, a Notary Public in and for said state, personally appeared _____, known to me to be the person(s) described in and who executed the foregoing instrument, who being by me duly sworn, acknowledged that they/he/she executed the same as their free act and deed for the purposes therein stated.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal.

Notary Public